

CPS-252

May 26, 2005

UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

C.A. No. **05-1204**

RANDY ARTHUR BORNHEIMER

VS.

PENNSYLVANIA BOARD OF PROBATION AND PAROLE, ET AL.

(W.D. PA. CIV. NO. 03-cv-00375)

Present: ALITO, MCKEE AND AMBRO, CIRCUIT JUDGES

Submitted is Appellant's request for a certificate of appealability under 28 U.S.C. § 2253(c)(1) in the above-captioned case.

Respectfully,

Clerk

MMW/CJG/arl

ORDER

The foregoing request for a certificate of appealability is granted on the issue of whether the District Court properly dismissed Appellant's petition for writ of habeas corpus on grounds of procedural default, see DeFoy v. McCullough, 393 F.3d 439, 445 (3d Cir. 2005); Coady v. Vaughn, 251 F.3d 480, 489 (3d Cir. 2001); see also Lines v. Larkins, 208 F.3d 153, 162 (3d Cir. 2000), or on the alternative ground that Appellant's ex post facto challenge to the Parole Board's decision denying him parole lacked merit. See Mickens-Thomas v. Vaughn, 321 F.3d 374 (3d Cir. 2003). The Clerk shall not appoint counsel. See 3d Cir. I.O.P. 10.3.2.



By the Court,

/s/ Theodore A. McKee
Circuit Judge

Marcia M. Waldron

Dated: August 10, 2005 Marcia M. Waldron, Clerk

ARL/cc: RAB; TGE; CKS